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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 ALBERT BURKLEY,) Case No. CV 18-7539-RGK (JPR)
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13) Petitioner,)
14) v.) ORDER SUMMARILY DISMISSING
15) PETITION FOR WRIT OF HABEAS
16) CORPUS AND ADMINISTRATIVELY
17) CLOSING CASE
18)
19) WILLIAM JOE SULLIVAN,
20) Warden,
21) Respondent.)
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On August 29, 2018, Petitioner, a state prisoner, filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254, challenging his 1997 convictions for carjacking and robbery. (Pet. at 2.) This is not his first federal habeas petition challenging the same underlying state-court judgment. He first filed one in July 1998, which the Court denied without prejudice because the claims presented had not been exhausted in state court. See Burkley v. Ayers, No. 98-CV-6180-DT (MC) (C.D. Cal. denied Mar. 3, 2000). In October 2000, he filed another, which the Court dismissed as time-barred. See Burkley v. McGrath, No. 00-CV-11549-DT (MC) (C.D. Cal. dismissed Apr. 27, 2001). Over the next decade, he filed numerous appeals and pleadings in this

1 Court and in the Ninth Circuit; all were denied. See R. & R. at
2 2-4, Burkley v. Jacquez, No. 13-CV-00424-VAP (RNB) (C.D. Cal.
3 Jan. 24, 2013), ECF No. 3 (listing each action).

4 In January 2010, Petitioner filed his third habeas petition
5 in this Court, raising the same claims as in the two prior
6 petitions. That petition was dismissed as successive within the
7 meaning of 28 U.S.C. § 2244(b). See Burkley v. Jacquez, No. 10-
8 CV-00185-AHM (MLG) (C.D. Cal. dismissed May 26, 2010). In July
9 2011, he filed another habeas petition in this Court, and it too
10 was dismissed as successive. See Burkley v. Jacquez, No. 11-CV-
11 5852-VAP (MLG) (C.D. Cal. dismissed Aug. 19, 2011). On January
12 18, 2013, he filed yet another petition; the Court dismissed it
13 and declared Petitioner a vexatious litigant. See Burkley v.
14 Jacquez, No. 13-CV-0424-VAP (MLG) (C.D. Cal. dismissed Feb. 15,
15 2013).

16 With the pending Petition, Petitioner again seeks to
17 challenge his 1997 convictions. The Anti-Terrorism and Effective
18 Death Penalty Act of 1996 provides in § 2244(b) as follows:

19 (1) A claim presented in a second or successive habeas
20 corpus application under section 2254 that was presented
21 in a prior application shall be dismissed.

22 (2) A claim presented in a second or successive habeas
23 corpus application under section 2254 that was not
24 presented in a prior application shall be dismissed
25 unless –

26 (A) the applicant shows that the claim relies on a
27 new rule of constitutional law, made retroactive to
28 cases on collateral review by the Supreme Court,

1 that was previously unavailable; or

2 (B)(i) the factual predicate for the claim could
3 not have been discovered previously through the
4 exercise of due diligence; and


5 (ii) the facts underlying the claim, if proven
6 and viewed in light of the evidence as a whole,
7 would be sufficient to establish by clear and
8 convincing evidence that, but for constitutional
9 error, no reasonable factfinder would have found
10 the applicant guilty of the underlying offense.

11 (3)(A) Before a second or successive application
12 permitted by this section is filed in the district court,
13 the applicant shall move in the appropriate court of
14 appeals for an order authorizing the district court to
15 consider the application.

16 The pending Petition is successive within the meaning of
17 § 2244(b) because it challenges the same convictions attacked by
18 Petitioner's prior habeas petitions. Accordingly, Petitioner was
19 required to secure an order from the Ninth Circuit permitting its
20 filing. See § 2244(b)(3)(A). This Court does not have
21 jurisdiction to consider the Petition without the Ninth Circuit's
22 prior authorization. See Cooper v. Calderon, 274 F.3d 1270,
23 1273-74 (9th Cir. 2001) (per curiam). The Court's review of the
24 Ninth Circuit's docket on PACER shows that Petitioner has filed
25 three requests in that court for leave to file a successive
26 petition, the most recent in June 2018; each request has been
27 denied. Therefore, Petitioner did not have leave of the Ninth
28 Circuit to file this Petition.

1 For the foregoing reasons, the Petition is SUMMARILY
2 DISMISSED and the Clerk is directed to administratively close
3 this case. See R. 4, Rs. Governing § 2254 Petitions in U.S.
4 Dist. Cts. ("If it plainly appears . . . that the petitioner is
5 not entitled to relief in the district court, the judge must
6 dismiss the petition."); C.D. Cal. R. 72-3.2 (authorizing
7 Magistrate Judge to prepare summary-dismissal order for District
8 Judge's signature).

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10 DATED: September 17, 2018



R. GARY KLAUSNER
U.S. DISTRICT JUDGE

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12 Presented by:

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14 Jean Rosenbluth
15 U.S. Magistrate Judge
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